

**NOV 18 2003**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

MARIN SOLANO ROBLES-	)	
DOROTEO; MARTHA HEROINA	)	
GOMEZ-SANTOS,	)	
	)	No. 02-71787
Petitioners,	)	
	)	BIA Nos. A70-190-442
v.	)	A70-190-443
	)	
JOHN ASHCROFT, Attorney	)	MEMORANDUM*
General,	)	
	)	
Respondent.	)	
_____	)	

On Petition for Review of a Decision of the  
Board of Immigration Appeals

Argued and Submitted November 7, 2003  
Pasadena, California

Before: B. FLETCHER, RYMER, and GRABER, Circuit Judges.

Marin Robles-Doroteo and Martha Heroina Gomez-Santos (collectively, Robles-Doroteo), natives and citizens of Peru, petition for review of the decision by the Board of Immigration Appeals (BIA) dismissing as untimely their appeal from denial of their requests for asylum and withholding of removal. We deny the

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

petition.

We cannot say that the BIA abused its discretion in declining to accept Robles-Doroteo's appeal on certification. 8 C.F.R. § 1003.1(c); *Shamsi v. INS*, 998 F.2d 761, 762 n.2 (9th Cir. 1993) (per curiam). Assuming that equitable tolling applies, *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1184 (9th Cir. 2001) (en banc), the clock began to run once Robles-Doroteo and new counsel learned of the notary's failure, *cf. Iturribarria v. INS*, 321 F.3d 889, 899 (9th Cir. 2003) (indicating that the limitation period begins to run when the petitioner first became aware of prior representative's fraud); *Socop-Gonzalez*, 272 F.3d at 1194-97 (tolling the limitations period until the date that INS error was discovered, or with due diligence should have been discovered). Because an appeal should have been taken within thirty days of the immigration judge's decision, 8 C.F.R. § 1003.38, the request for appeal by certification should have been filed within thirty days of the date of discovering the notary's error. However, it was not and, as the BIA found, this means that the appeal was untimely.

Robles-Doroteo argues that he met the *Matter of Lozada*, 19 I. & N. Dec. 637 (B.I.A. 1988), requirements to reopen his case before the Board, but the Board did not hold otherwise. Instead, the BIA acknowledged the point but held that the appeal was untimely because it was not filed within thirty days after the notary's

error was discovered by counsel.

In denying Robles-Doroteo's petition we express no opinion about other avenues of relief that might be available, such as a petition for writ of habeas corpus.

PETITION DENIED.